

In the Court of Appeals of the State of Alaska

Anthony Michael Pisano,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13693**

Order
Bail Appeal

Date of Order: **4/1/2021**

Trial Court Case No. **3AN-17-07343CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

This case is before us for a fifth time on a bail appeal. The defendant, Anthony Michael Pisano, is charged, *inter alia*, with three counts of first-degree murder and one count of third-degree assault.¹ Pisano has no prior criminal history.

On January 31, 2020, after previously remanding Pisano's case several times for reconsideration of bail, we affirmed — in a 2-1 decision — the superior court's pretrial bail order requiring Pisano to post a \$500,000 cash performance bond and a \$250,000 cash or corporate appearance bond.²

Pisano's case proceeded to trial, and it was submitted to a jury in March 2020. At trial, Pisano asserted that one of the State's witnesses shot and killed one of the victims. Pisano admitted that he shot the other two victims, but he argued that he was acting in self-defense. Pisano's trial ended in a mistrial after the jury was unable to reach a unanimous verdict. Pisano is currently awaiting retrial.

¹ AS 11.41.100(a)(1)(A) and AS 11.41.220(a)(1)(A), respectively.

² *Pisano v. State*, Court of Appeals File No. A-13549 (Order dated Jan. 31, 2020).

In May 2020, following the mistrial, Pisano asked the superior court to modify the monetary portion of its bail order. In particular, Pisano proposed a monetary bail posting of a \$25,000 cash performance bond and a \$50,000 cash or corporate appearance bond. In addition, Pisano proposed maintaining the following conditions that were already approved by the court: twenty-four-hour supervision by a third-party custodian (Pisano's mother as the primary custodian and a family friend as a substitute, when needed); twenty-four-hour GPS electronic monitoring through Alaska Pretrial Services; and house arrest with passes only for verified medical appointments.

Thus, under conditions that had already been approved by the court, Pisano would be monitored twenty-four hours a day by electronic monitoring and would additionally be monitored twenty-four hours a day by a third-party custodian. Furthermore, he would reside in the home of an Anchorage pediatrician and his wife who have installed a security system in their house which contacts the police department if there is a breach in the security perimeter. Pisano also agreed to remain on house arrest and would not be permitted to leave the house, except for verified medical appointments. Court hearings and attorney visits would be conducted by video or telephone, unless otherwise ordered by the superior court. Pisano also agreed not to possess any weapons and Alaska Pretrial Services will search the home in which he will stay. He is precluded from having contact with the families of the victims, and he is precluded from leaving the State without the court's permission. Pisano surrendered possession of his passport and agreed to sign a waiver of extradition before his release.

Following a bail hearing, the court declined to alter the previously-set monetary bail.

When this current bail appeal was first filed, the only contested issue was whether the superior court abused its discretion by rejecting Pisano’s proposed monetary bail and instead maintaining the \$500,000 cash performance bond and \$250,000 cash or corporate appearance bond. Since then, the State has filed notice in this Court, alleging Pisano has engaged in additional criminal conduct. According to the State, it has evidence that, following the mistrial in March 2020, Pisano immediately began an effort to coordinate the murder of one of the primary witnesses against him.

This new information is obviously pertinent to any future bail decision. Nonetheless, we must address the issue now before us — *i.e.* whether the superior court’s May 2020 bail order was an abuse of discretion.³

Article I, Section 11 of the Alaska Constitution entitles criminal defendants to be released on bail.⁴ The traditional right to pre-trial release on bail serves a number of important purposes including permitting the “unhampered preparation of a defense” and serving to “prevent the infliction of punishment prior to conviction.”⁵ Although criminal defendants do not have an absolute right to monetary bail in an amount they can post,⁶ both the United States and Alaska Constitutions prohibit the imposition of

³ Former AS 12.30.030(a) (2017) (“The appellate court shall affirm the order unless it finds that the lower court abused its discretion.”)

⁴ Alaska Const. art. I, § 11.

⁵ *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

⁶ *Gilbert v. State*, 540 P.2d 485, 486 n.12 (Alaska 1975) (citing *Reeves v. State*, 411 P.2d 212 (Alaska 1966)).

“excessive” bail.⁷ Excessive bail is that which goes beyond the amount actually necessary to fulfill the purposes of bail — *i.e.*, to reasonably assure the defendant’s appearance and the safety of the community.⁸

In Judge Wollenberg’s dissent to our most recent bail order in this case, prior to Pisano’s first trial, she noted that Pisano’s release plan included several nonmonetary performance protections: electronic monitoring; live monitoring by a third-party custodian; restrictions on Pisano’s movement outside of his proposed residence; inspection of that residence; and a prohibition on possessing weapons.⁹ She also noted that the superior court had not explained what purpose each of the performance protections — the nonmonetary conditions and the \$500,000 cash performance bond — was designed to serve within the supervision plan.¹⁰ As a result, she was concerned that the superior court was evaluating Pisano’s monetary bail in a vacuum, rather than as one component of the structured and restrictive supervision package it had approved.¹¹

This Court agreed with the principles discussed in Judge Wollenberg’s dissent.¹² But, relying on the superior court’s finding that Pisano’s financial status

⁷ U.S. Const. amend. VIII; Alaska Const. art. I, § 12.

⁸ See *Stack*, 342 U.S. at 5; *Doe v. State*, 487 P.2d 47, 51 (Alaska 1971); *Torgerson v. State*, 444 P.3d 235, 237 (Alaska App. 2019).

⁹ *Pisano v. State*, Court of Appeals File No. A-13549 (Order dated Jan. 31, 2020), at 6 (Wollenberg, J., dissenting).

¹⁰ *Id.* at 6-7 (Wollenberg, J., dissenting).

¹¹ *Id.* at 6 (Wollenberg, J., dissenting).

¹² *Id.* at 4.

remained inconclusive, we determined that the monetary bail amount set by the court was not manifestly unreasonable.¹³

Pisano’s financial status is seemingly much clearer now. Following the mistrial, Pisano’s private attorney withdrew as counsel and the Alaska Public Defender Agency was reappointed after the superior court found Pisano to be indigent. At the May 2020 bail hearing, the superior court heard lengthy testimony from Pisano’s mother, Suzanne Pisano, and his wife, Tracey Pisano, about the family’s financial status. This testimony provided the court with detailed information about the finances of Pisano’s extended family, which friends have been helping the family, and how much money these friends have provided. Accordingly, although Pisano’s ability to hire private counsel previously raised questions about his financial status, including his claim of indigency, those questions have now largely been answered.

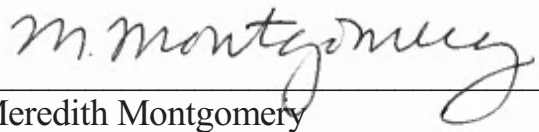
Prior to receiving the State’s recent notice, our intent was to remand this case to the superior court for reconsideration of Pisano’s monetary bail in light of the new clarity on Pisano’s financial resources. But because the State’s new information may impact the court’s assessment of the danger Pisano poses to the victims and the community and may support the superior court’s decision to give significant weight to that bail factor, a remand for consideration of that information is also clearly warranted.

¹³ *Id.* at 4-5; *see also* former AS 12.30.011(c) (2017) (requiring the court to consider, among other factors, the “assets available to the [defendant] to meet monetary conditions of release”). We note that the current bail statute contains the same requirement. *See* AS 12.30.011(c)(8) (2019).

Accordingly, we **REMAND** this case to the superior court for proceedings consistent with this order and to provide the court an opportunity to consider the information contained in the State's recent notice.

Entered at the direction of the Court.

Clerk of the Appellate Courts


Meredith Montgomery

cc: Judge Marston
Trial Court Clerk - Anchorage

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